Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

RECEIVED

JUL 3 0 2001

FCC MAIL ROOM

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers	)	CC Docket No. 00-256

Comments of the
Nebraska Rural Independent Companies

Introduction.

The Nebraska Rural Independent Companies (the "Companies"),[1] by their attorneys, respectfully submit their comments in the above captioned proceeding addressing the Further Notice of Proposed Rulemaking ("FNPRM") on the Rural Task Force's ("RTF") proposal to freeze per-line support in rural carrier study areas in which a competitive eligible telecommunications carrier ("CETC") is providing service.[2] The Companies commend the Federal Communications Commission ("FCC" or "Commission") for recognition of potential harm that could be caused to rural incumbent local exchange carriers ("ILECs") and their

[1] Companies submitting these collective comments include: Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Curtis Telephone Co., Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., Hooper Telephone Company, K&M Telephone Company, Inc., NebCom, Inc., Nebraska Central Telephone Company, Northeast Nebraska Telephone Co., Pierce Telephone Co., Rock County Telephone Company, Southeast Nebraska Telephone Co., Stanton Telephone Co., Inc. and Three River Telco.

[2] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, and *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers,* CC Docket No. 00-256, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, FCC 01-157 (rel. May 23, 2001) (*"RTF Order"*).

customers by freezing federal universal service support upon provision of service by a CETC. The importance of this issue warranted developing the record more fully before taking such a precipitous action.

The Companies are commenting on the RTF's proposal to freeze federal universal service support for rural ILECs upon provision of service by a CETC because they think it is important for the Commission to understand the impact the recommendation would have on rural companies such as those in Nebraska. The Nebraska Companies represent a unique subset of rural companies that on average serve areas that are less dense than most rural telephone companies across the country, and are experiencing little if any access line growth. This combination of factors results in relatively high costs per subscriber, and few if any opportunities to offset revenue losses if a customer is captured by an ETC. While a freeze of universal service support would negatively impact any rural ILEC, it would be especially devastating for rural ILECs such as those in Nebraska and ultimately to their customers. Therefore, as supported by the arguments in the remainder of these comments, the Companies urge the Commission not to adopt a freeze on universal service support as proposed by the RTF.

The Current Record Clearly Indicates the Flaws in the RTF's Proposal.

The FCC has already recognized the inadvisability of a freeze through its statements in the *RTF Order*. The Commission noted ". . . at this time, the costs of adopting the Rural Task Force's proposal to freeze high-cost loop support in competitive study areas would significantly outweigh the potential benefits."[3] Furthermore, the FCC went on to say "[w]e conclude, therefore, that adoption of this proposal is not warranted." These statements appear to be

[3] Id. at &130.

premised on several flaws in the RTF's proposal to freeze rural universal service support upon provision of service by a CETC, which were cited in the FNPRM.

The possibility of excessive fund growth, which the RTF explained as the reason for this proposal,[4] is speculative.[5] Thus, it is premature to address a problem that may not exist. Furthermore, the indexed cap on the high-cost loop fund will operate as a check on excessive fund growth.[6]

More importantly, freezing support in competitive study areas may have the unintended consequence of discouraging investment in rural infrastructure, contrary to the fundamental goals of the RTF plan.[7] Small, rural carriers are more likely to have a "cyclical" investment pattern in which they upgrade a major portion of their network on a periodic basis.[8] This is because they often have few switches, and thus cannot spread switch investment over time. Furthermore, their small scale often makes it more economical to replace or upgrade their entire outside plant at the same time, as dividing such investments into projects which would span several years would result in small projects with much greater costs. This cyclical investment pattern exacerbates problems caused by a freeze. If a CETC were designated in a rural carrier's area at a point in time when the carrier had a large proportion of depreciated plant that needed replacement, a freeze would prevent the rural carrier from having its support recomputed to cover a new investment. This would give a rural carrier no choice but to let its' network deteriorate by not

[4] Id. at &125.

[5] Id. at &123.

[6] Id. at &126.

[7] Id. at &129.

[8] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of Townes Telecommunications, Inc. (filed Feb. 26, 2001) at 2.

making needed investments, as it would face the likely prospect that it would not be able to recover the costs associated with the new investment.

The unintended consequence of a freeze in discouraging investment in rural infrastructure would likely also have a negative effect on the deployment of advanced services capability in rural areas. The RTF had recommended a "no barriers to advanced services" policy for rural carriers.[9] This policy advocated that universal service support could be used to invest in infrastructure capable of providing access to advanced services. The Commission, in the *RTF Order*, affirmed that this policy does not violate Section 254(e) of the Telecommunications Act of 1996, which mandates that support be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[10] Rural carriers may have been waiting for clear direction that they can use universal service support funds to invest in a network capable of providing advanced services, such as has been provided by the FCC, prior to such investment. However, the threat of a freeze in support will provide a significant disincentive to invest in advanced services capability, as rural carriers risk not being able to recover the sizable investments they would make to provide this capability.

The RTF had recommended that additional support should be available to recover the costs of hurricanes, floods, and other events that are declared to be natural disasters by Federal or state regulatory authorities, and that directly affect the provision of supported services within a study area.[11] New administrative requirements and procedures would be necessary to implement the RTF's proposal to allow incumbent rural carriers to request increased support to recover the

[9] *See RTF Order* at &197.

[10] Id. at &200.

[11] Id. at footnote 332.

costs of catastrophic events affecting their ability to provide supported services.[12] The Commission notes that, ". . . to avoid undermining the original purpose of fixing support, some procedure would be necessary to ensure that a carrier's need for increased per-line support is due to a catastrophic event rather than the loss of lines to a competitor."[13] This aspect of the recommendation is even more troubling than the development of new and cumbersome procedures. While the RTF recommendation recognized that natural disasters could affect the ability of a rural carrier to provide supported services within its study area, it did not recognize that the imposition of a freeze on universal service support could, over time, have the same detrimental effects on a carrier's ability to provide universal service. As discussed previously, a freeze in support will discourage investment in rural infrastructure. If a rural carrier's network is not maintained through continuous investment funded by sufficient universal service support, it may deteriorate to a state similar to that after a natural disaster. This would be especially true for the customers which are located the greatest distance from a central office, as the facilities to these customers would be the most costly to maintain.

As the Companies will explain throughout the remainder of these comments, there are additional reasons, beyond these already present in the record, that a freeze should not be adopted.

[12] Id. at &128.

[13] Ibid.

The Issue of Stranded Costs Must be Addressed Concurrently with the Proposal to Freeze Universal Service Support.

As the Companies indicated in their comments to the Joint Board on the RTF Recommendation, the FCC should address the issue of stranded costs quickly.[14] While competitive entry into areas served by rural carriers raises the risk of unrecovered investment, or stranded costs, the imposition of a freeze on federal universal service support upon the introduction of competition would further exacerbate the problem. Not only would rural carriers face the prospect of having fewer customers from which to recover their costs of investment through end-user revenues, but the carriers would also be confronted with universal service support payments which would be frozen and thus would likely not cover the shortfall in end-user revenues.

The RTF noted that the issue of stranded costs is subject to a high degree of controversy and disagreement.[15] However, this is not a sufficient reason for the Commission to avoid addressing the issue.[16] Furthermore, the Commission also cited that few competitive carriers currently receive support for rural carrier study areas, and there is no evidence in the record projecting specific levels of competitive entry in the future.[17] However, these are also reasons cited for not instituting a freeze in support. Therefore, if the FCC decides that a freeze in support is necessary, these same conditions would necessitate addressing a mechanism for recovering stranded costs.

---

[14] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of the Nebraska Rural Independent Companies on the Rural Task Force Recommendation (filed Nov. 3, 2000) at 7.

[15] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service (rel. Sept. 29, 2000) at 39.

[16] The Commission said "[w]e express no opinion on the issue of stranded costs. . . ." *RTF Order* at footnote 322.

[17] Id. at footnote 326.

As the RTF noted, "[t]he only alternative revenue source to recover lost universal service support for rate-of-return regulated carriers is to shift that revenue requirement into local service rates."[18] The Companies have pointed out that Nebraska has already implemented a statewide local service rate benchmark of $17.50 for residential customers.[19] This rate, combined with the federal subscriber line charge and other mandatory surcharges and taxes will result in an average basic local service bill that is almost 25 percent higher than the national average as indicated by the most recent FCC data on average residential rates in urban areas.[20] Furthermore, while basic local residential rates in Nebraska are substantially higher than the national average, median household incomes are lower, especially in the rural, less populated counties of the state.[21] The higher rates and lower incomes in Nebraska indicate that it may be difficult for rural carriers to recoup any stranded costs through increases in basic local service rates.

Even if rural ILECs in Nebraska were to increase their basic local service rates, any ILEC receiving state universal service support would have its amount of state support reduced by an amount equal to the increased revenue from the rate increase.[22] Therefore, if Nebraska rural

---

[18] *See Competition and Universal Service*, Rural Task Force White Paper 5, September 2000 at 19-20.

[19] *See Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, and *Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166 (*"MAG Plan Docket"*) Comments of the Plains Rural Independent Companies (filed Feb. 26, 2001) at 10.

[20] Ibid.

[21] *See* Letter to Magalie Roman Salas, Secretary, Federal Communications Commission, RE: CC Docket Nos. 00-256, 96-45, 98-77, 98-166, from Wallman Strategic Consulting, LLC (filed Apr. 19, 2001). The data indicated while the median income for a family of four in the United States is $37,005, the range for counties served by three rural companies in Nebraska making the ex parte presentation is $19,468 to $32,473.

[22] *See the Nebraska Public Service Commission, on its own Motion, Seeking to Conduct an Investigation into Intrastate Access Charge Reform*, Application No. C-1628, Findings and Conclusions, (entered Jan. 13, 1999) at 9. An eligible carrier's state support equals ". . .the implicit support it has removed through changes in access charges and basic local rate reductions, less the implicit support obviated through basic local service rate increases. . . ."

ILECs were to ignore affordability concerns and increase their basic local service rates in an attempt to grow their revenues, they would still be left with the same total revenues. Thus, they have no mechanism to offset loss of federal universal service support that could be caused by a freeze. This situation illustrates that the Commission needs to take into account the state-specific consequences that its actions, such as those proposed in this FNPRM, could have on universal service.

A Freeze of Universal Service Support Could Have Even Greater Negative Consequences on Rural ILECs and Their Customers if a Portion of Access Cost Recovery is Moved into a Portable Subsidy Element.

The evidence on the record, as well as the fact that the Commission has not addressed the issue of stranded costs, present overwhelming justification for not adopting a freeze. However, the negative consequences of a freeze could be even greater than those presented here, depending on the outcome of the access reform proceeding currently being addressed for rate-of-return ("ROR") carriers. The Multi-Association Group ("MAG") Plan for access reform for ROR carriers includes a provision whereby ROR carriers would move their access rates to a prescribed composite access rate ("CAR").[23] The difference between a ROR carrier's access rates upon entering into the MAG Plan and the CAR would be recovered through a portable subsidy element referred to as rate averaging support ("RAS").[24] While the plan proposed that the provision to adopt a CAR and RAS be optional, some commenting parties have advocated that

[23] *See Improved Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, RM No. 10011, Petition for Rulemaking of the LEC Multi-Association Group (filed Oct. 20, 2000) at 11.

[24] Id. at 5.

this provision be applied to all ROR carriers.[25] Therefore, the MAG plan could result in all ROR carriers receiving a larger proportion of their cost recovery through portable subsidies.

The MAG Plan did not propose to apply a cap on the RAS. However, there may be some suggestions that RAS be capped, similar to high-cost universal service support. Furthermore, given that RAS will be a portable subsidy element, it will be subject to the same growth pressures from the development of competition as federal rural universal service support. If a freeze is instituted on federal rural universal service support, it would seem very possible that a freeze will be instituted for RAS as well, since it is proposed to be a universal service support mechanism. The movement of large amounts of cost recovery into portable subsidies, which could be capped or frozen, could have further negative consequences for rural carriers, as illustrated by the following example.

Assume a rural carrier with 1,000 access lines receives about $200 per month total revenue per access line, including federal and state universal service support. The carrier receives $15.00 monthly per line federal universal service support. If the FCC instituted a RAS for all ROR carriers, the rural company would receive $40.00 per month per line in RAS. Thus, the rural carrier would receive about 7.5 percent of its total revenue from federal universal service support, and about 20.0 percent of its total revenue from RAS. If the rural carrier lost only 200 or 20.0 percent of its lines to a competitor and both federal universal service support and RAS were frozen, the company would lose about 5.5 percent of its total revenues through the freezing of these two support mechanisms.[26] At a 50.0 percent loss of market share, the rural

[25] *See MAG Plan Docket*, AT&T Comments on MAG NPRM (filed Feb. 26, 2001) at 2, 6 and Comments of the Competitive Universal Service Coalition (filed Feb. 26, 2001) at 12, 15-16.

[26] Calculated as ($15 +$40) * .2 *1,000 *12/$200 * 1,000 * 12.

carrier would lose 13.75 of its total revenue through the frozen support mechanisms, or about one-seventh of its total revenue.

This example illustrates that the substantial under-recovery of costs that could be incurred through the freezing of universal service support would be further exacerbated by the institution of RAS that could be frozen as well. This is yet another reason why a freeze of universal service support upon competitive entry should not be adopted.

Conclusion.

Federal universal service support should not be frozen for rural carriers upon provision of local service by a CETC in their study areas. As the FCC succinctly stated, ". . . at this time, the costs of adopting the Rural Task Force's proposal to freeze high-cost loop support in competitive study areas would significantly outweigh the potential benefits." The issue of stranded costs must be addressed concurrently with any consideration of a freeze. Furthermore, the movement of access cost recovery into a portable subsidy mechanism as proposed in the MAG Plan, which could be frozen as well, would further contribute to under-recovery of costs. Overall, a freeze would have negative consequences for investment in rural networks, and most importantly would harm the rural customers served by those networks.

Dated this 27th day of July, 2001.

Respectfully submitted,

Arlington Telephone Company,
The Blair Telephone Company,
Cambridge Telephone Company,
Clarks Telecommunications Co.,
Consolidated Telephone Company,
Consolidated Telco, Inc.,
Curtis Telephone Co.,
Eastern Nebraska Telephone Company,
Great Plains Communications, Inc.,
Hartington Telecommunications Co., Inc.,
Hershey Cooperative Telephone Company, Inc.,
Hooper Telephone Company,
K&M Telephone Company, Inc.,
NebCom, Inc.,
Nebraska Central Telephone Company,
Northeast Nebraska Telephone Co.,
Pierce Telephone Co.,
Rock County Telephone Company,
Southeast Nebraska Telephone Co.,
Stanton Telephone Co., Inc. and
Three River Telco (the "Companies")

By: Paul M. Schudel

Paul M. Schudel, No. 13723
WOODS & AITKEN LLP
301 South 13th Street, Suite 500
Lincoln, Nebraska 68508
(402) 437-8500